LIBRARY
SUPREME COURT, U. S.

MAR 13 1968
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1230

SOUTHERN PACIFIC COMPANY, *Petitioner,*

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

TOM MARTIN DAVIS
Esperson Building
804 Travis Street
Houston, Texas

SHEA & GARDNER
734 Fifteenth Street, N.W.
Washington, D.C. 20005
Of Counsel for Petitioner

FRANCIS M. SHEA
RICHARD T. CONWAY
RALPH J. MOORE, JR.
734 Fifteenth Street, N.W.
Washington, D.C. 20005

JAMES R. WOLFE
Union Station Building
Chicago, Illinois 60606
Attorneys for Petitioner

INDEX

Table of Contents

	Page
Opinions Below	1
Jurisdiction	1
Question Presented	2
Statutes Involved	2
Statement	2
Reasons for Granting the Writ	9
Conclusion	21
Appendix A: Railway Labor Act	1a
Section 3	1a
Section 9	3a
Appendix B: Judgment on Arbitration Award, February 28, 1964	6a
Appendix C: Order of District Court, May 11, 1964	7a
Appendix D: Opinion of District Court, March 28, 1966	9a
Appendix E: Order of District Court, April 6, 1966	13a
Appendix F: Opinion of District Court, June 2, 1966	14a
Appendix G: Opinion of Court of Appeals, October 6, 1967	18a
Appendix H: Judgment of Court of Appeals, October 6, 1967	21a
Appendix I: Order and Memorandum of Court of Appeals on Petition for Rehearing, December 15, 1967	22a

Table of Citations

Cases:

Belanger v. *New York Central Railroad Co.*, 384 F. 2d 35 (6th Cir. 1967) 16

Brotherhood of Loc. Fire. & Eng. v. *Chicago, B. & Q. R. Co.*, 225 F. Supp. 11 (D.D.C.), *aff'd*, 331 F. 2d 1020 (D.C. Cir. 1964) 4

Brotherhood of Railroad Trainmen v. *Akron & B. B. & R. Co.*, 385 F. 2d 581 (D.C. Cir. 1967) 6, 11, 18

Cases—Continued

	Page
Brotherhood of Railroad Trainmen v. *Certain Carriers*, 349 F. 2d 207 (D.C. Cir. 1965)	5
Brotherhood of Railroad Train. v. *Chicago, M., St. P. & P. R. Co.*, 345 F. 2d 985 (D.C. Cir. 1965)	5
Brotherhood of Railroad Trainmen v. *Missouri Pac. R. Co.*, 230 F. Supp. 197 (E.D. Mo. 1964)	5
Brotherhood of Rail. Train. v. *Terminal R. Ass'n*, 380 F. 2d 584 (D.C. Cir. 1967)	5
Central Kentucky Co. v. *Comm'n*, 290 U.S. 264 (1933)	19, 20
Elgin, J. & E. R. Co. v. *Burley*, 325 U.S. 711 (1945)	10, 18
Gunther v. *San Diego & A.E.R. Co.*, 382 U.S. 257 (1965)	8, 12
In re Certain Carriers, 229 F. Supp. 259 (D.D.C. 1964)	5
John Wiley & Sons v. *Livingston*, 376 U.S. 543 (1964)	15
Locomotive Engineers v. *B. & O. R. Co.*, 372 U.S. 284 (1963)	10
Locomotive Engrs. v. *L. & N. R. Co.*, 373 U.S. 33 (1963)	12, 14
Locomotive Engineers v. *M.-K.-T. R. Co.*, 363 U.S. 528 (1960)	9, 20
Manning v. *American Airlines*, 329 F. 2d 32 (2d Cir. 1964)	11
Missouri-Kansas-Texas R. Co. v. *Brotherhood of Railroad Tr.*, 342 F. 2d 298 (5th Cir. 1965)	18
Moore v. *Illinois Central R. Co.*, 312 U.S. 630 (1941)	16
Order of Conductors v. *Pitney*, 326 U.S. 561 (1946)	8, 12, 13, 17, 18, 19
Pacilio v. *Pennsylvania Railroad Co.*, 381 F. 2d 570 (2d Cir. 1967)	17
Pennsylvania R. Co. v. *Day*, 360 U.S. 548 (1959)	8, 12, 13, 17, 18, 19
Ramsey v. *Chesapeake & O. R. Co.*, 75 F. Supp. 740 (N.D. Ohio 1948)	18
Republic Steel Corp. v. *Maddox*, 379 U.S. 650 (1965)	15, 17

Cases—Continued

	Page
Slocum v. *Delaware, L. & W. R. Co.*, 339 U.S. 239 (1950)	8, 12, 13, 16, 17, 18, 19
Southern Ry. Co. v. *Brotherhood of Locomotive Firemen, Etc.*, 337 F. 2d 127 (D.C. Cir. 1964)	19
Steelworkers v. *American Mfg. Co.*, 363 U.S. 564 (1960)	15
Steelworkers v. *Enterprise Corp.*, 363 U.S. 593 (1960)	15
Steelworkers v. *Warrior & Gulf Co.*, 363 U.S. 574 (1960)	15
Teamsters Local v. *Lucas Flour Co.*, 369 U.S. 95 (1962)	16
Textile Workers v. *Lincoln Mills*, 353 U.S. 448 (1957)	16
Trainmen v. *Chicago R. & I. R. Co.*, 353 U.S. 30 (1957)	5, 12, 16, 20
Transcontinental Air v. *Koppal*, 345 U.S. 653 (1953)	16
Ventura Consolidated Oil Fields v. *Rogan*, 86 F. 2d 149 (9th Cir. 1936)	20
Walker v. *Southern R. Co.*, 385 U.S. 196 (1966)	12, 16
Western Air Lines v. *Labor Commissioner*, 167 F. 2d 566 (9th Cir. 1948)	5

Statutes:

Public Law 89-456, 80 Stat. 208	9, 12
Public Law 88-108, 77 Stat. 132	3, 4, 13, 14
Judicial Code, 28 U.S.C. § 1254(1)	2
Railway Labor Act, 45 U.S.C. § 151 et seq.	*passim*
Section 2, 45 U.S.C. § 152	10, 19
Section 3, 45 U.S.C. § 153	*passim*
Section 5, 45 U.S.C. § 155	10, 11
Section 6, 45 U.S.C. § 156	3, 10, 11, 13, 14, 19
Section 7, 45 U.S.C. § 157	3, 5, 10, 11, 14
Section 8, 45 U.S.C. § 158	3, 5, 10, 11, 14
Section 9, 45 U.S.C. § 159	*passim*
Section 10, 45 U.S.C. § 160	10

Miscellaneous: Page

Hearings on H.R. 706 before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 89th Cong., 2d Sess. (1966) 11, 15
Thirty-Third Annual Report of the National Mediation Board (1967) 11, 14, 15

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No.

SOUTHERN PACIFIC COMPANY, *Petitioner*,

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled case on October 6, 1967.

Opinions Below

The opinions of the District Court, set forth in Appendices D and F hereto, pp. 9a-12a, 14a-17a, *infra*, are reported at 253 F. Supp. 532 and 255 F. Supp. 290. The opinion of the Court of Appeals, set forth in Appendix G hereto, pp. 18a-20a, *infra*, is not yet officially reported but is unofficially reported at 56 CCH Lab. Cas. ¶ 12,209.

Jurisdiction

The judgment of the Court of Appeals, set forth in Appendix H hereto, p. 21a, *infra*, was entered October 6, 1967.

A timely petition for rehearing was denied by the order and memorandum of the Court of Appeals set forth in Appendix I hereto, pp. 22a-23a, *infra*, on December 15, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Question Presented

Whether a district court that enters judgment upon a railway labor arbitration award pursuant to Section 9 of the Railway Labor Act (45 U.S.C. § 159) has jurisdiction to determine individual employees' claims and grievances arising from alleged misapplications of the award, where those claims and grievances (1) have not been handled in accordance with the grievance procedure established by the parties' collective bargaining contract and (2) have not been referred to an adjustment board under Section 3 of the Railway Labor Act (45 U.S.C. § 153).

Statutes Involved

The statutes involved are Sections 3 and 9 of the Railway Labor Act (45 U.S.C. §§ 153, 159). The relevant parts of Sections 3 and 9 are printed in Appendix A hereto, pp. 1a-5a, *infra*.

Statement

This case concerns the power of a court to entertain claims and grievances of individual railroad employees arising from alleged misapplications of an arbitration award, without requiring the claimants to utilize the parties' grievance procedure or to submit their claims to an adjustment board under Section 3 of the Railway Labor Act (45 U.S.C. § 153).

Petitioner railroad and respondent union are parties to a 1948 collective bargaining contract between most of the nation's railroads and three railway labor organizations,

which established a procedure for the handling of *all* claims and grievances. The agreement provided that "all claims or grievances arising on and after November 1, 1948 . . . must be presented in writing . . . to the officer of the company authorized to receive same, within sixty days from the date of the occurrence on which the claim or grievance is based"; provided further for appeals from the disallowance of any such claim or grievance to higher carrier officials; and provided finally for appeals from the decision of "the highest [carrier] officer designated to handle claims and grievances" to any "tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved." The agreement prescribed the time within which each step of the grievance procedure had to be taken, provided that claims not disallowed by the carrier within the time allowed for such action "shall be considered valid and settled accordingly," and provided that disallowed claims not appealed within the time allowed for appeals "shall be barred" and the matter deemed "closed" (J.A. 266). The agreement remains in effect today (J.A. 255, 273).[1]

In 1959 petitioner and most of the nation's railroads served respondent and other unions with notices under Section 6 of the Railway Labor Act (45 U.S.C. §156) proposing changes in various collective bargaining contracts including the National Diesel Agreement, which required the railroads to assign firemen to virtually all locomotives. In 1963 the resulting dispute threatened to erupt in a nationwide railroad strike. To prevent such a disaster, Congress enacted P.L. 88-108, 77 Stat. 132. That law submitted the firemen's dispute to arbitration "pursuant to sections 7 and 8 of the

---

[1] Petitioner and respondent also are parties to a 1949 agreement which established a joint committee to which "any dispute or controversy arising on any carrier as to interpretation or application of any of the terms of the [1948] Agreement. . . shall be referred . . . for decision" (J.A. 288).

Railway Labor Act," provided that the arbitration award "shall be made and filed as provided in said sections and shall be subject to section 9 of said Act," and designated the United States District Court for the District of Columbia "as the court in which the award is to be filed" (P.L. 88-108, §4).

On November 26, 1963, Arbitration Board No. 282—the board established pursuant to P.L. 88-108—rendered its Award. The Award (J.A. 5-12) modified the National Diesel Agreement to permit the gradual elimination of firemen's positions. It did not establish any procedure for handling individual claims or grievances arising from the implementation of its provisions and did not purport to modify the parties' grievance procedures. Instead, it provided that "all agreements, rules, regulations, interpretations, and practices, however established, with respect to the employment of firemen . . . shall continue undisturbed except as modified by the terms of this Award" (J.A. 5). The Board has ruled that this means that the Award did not restrict application of the parties' usual grievance procedures (J.A. 14-17).

Following an unsuccessful attempt by respondent to impeach the Award, *Brotherhood of Loc. Fire. & Eng.* v. *Chicago, B. & Q. R. Co.*, 225 F. Supp. 11 (D.D.C.), *aff'd*, 331 F. 2d 1020 (D.C. Cir. 1964), the District Court entered judgment upon it in accordance with Section 9 of the Railway Labor Act (45 U.S.C. §159). The judgment established that the Award was "conclusive on the parties as to the merits and facts of the controversy" (45 U.S.C. §159 Second), providing simply, in the language of Section 9, that "judgment is hereby entered on the arbitration award . . . which judgment is final and conclusive upon the parties" (J.A. 13, p. 6a, *infra*).

Following the entry of judgment upon the Award, respondent threatened a strike over disputes that arose as to its meaning and application. Such a strike would have been

unlawful because Sections 7 Third (c) and 8(m) of the Railway Labor Act (45 U.S.C. §§157 Third (c), 158(m)) commit such disputes to the Arbitration Board for resolution.[2] Compare *Trainmen* v. *Chicago R. & I. R. Co.*, 353 U.S. 30 (1957). Accordingly, the carriers sought relief in the proceeding in which the judgment had been entered, and the District Court enjoined the strike (J.A. 18-19, pp. 7a-8a, *infra*). *In re Certain Carriers*, 229 F. Supp. 259 (D.D.C. 1964). The court did not condition its injunction on preservation of the *status quo* pending rulings by the Board because (in the words of the Court of Appeals) that "would have been a *de facto* suspension of [the Award] at variance with the spirit of the Act" (p. 19a, *infra*; 229 F. Supp. at 260). However, the court stated that if, like the union, the railroads refused to comply with the Award, the court "would not tolerate such . . . defiance and would compel them to comply" (229 F. Supp. at 261). Accordingly, the court reserved jurisdiction for any party "to apply to this Court . . . for such further orders as may be necessary or appropriate for the construction, carrying out or enforcement of this order or of the judgment heretofore entered in this proceeding upon the Award . . ., or any legal obligation resulting therefrom" (J.A. 19, p. 8a, *infra*).

Petitioner was among the railroads on which disputes arose as a result of the implementation of the Award. One such dispute arose from petitioner's failure during a 27-day period in September 1964 to assign firemen to the crew of an engine known as "Orange Switcher No. 2," which petitioner had inadvertently omitted from an interim listing

---

[2] *Western Air Lines* v. *Labor Commissioner*, 167 F. 2d 566 (9th Cir. 1948); *Brotherhood of Railroad Trainmen* v. *Missouri Pac. R. Co.*, 230 F. Supp. 197 (E.D. Mo. 1964); *Brotherhood of Railroad Train.* v. *Chicago, M., St. P. & P. R. Co.*, 345 F. 2d 985 (D.C. Cir. 1965); *Brotherhood of Railroad Trainmen* v. *Certain Carriers*, 349 F. 2d 207 (D.C. Cir. 1965); *Brotherhood of Rail. Train.* v. *Terminal R. Ass'n*, 380 F. 2d 584 (D.C. Cir. 1967).

of crews not requiring firemen which it served on respondent pursuant to the Award (J.A. 6-7, 162-163, 213-216, 256-258, 284-286). Because of the omission, the National Diesel Agreement remained applicable to Orange Switcher No. 2 and consequently was violated by petitioner's failure to assign firemen to the crew. See *Brotherhood of Railroad Trainmen* v. *Akron & B.B.R. Co.*, 385 F. 2d 581, 608-612 (D.C. Cir. 1967). Another dispute arose from petitioner's failure during 1964 to assign firemen to crews that occasionally "borrowed" road locomotives not equipped with "deadman controls" to perform certain yard switching operations (J.A. 150-154, 208-211, 252-255, 278-282). The Award provided that "no *yard* locomotive" not equipped with a deadman control should be operated without a fireman (J.A. 7), but contained no similar provision applicable to *road* locomotives used in "yard or industrial switching" (J.A. 14). Consequently, petitioner believed (and still believes) that it had no obligation to assign firemen to these crews (J.A. 208, 278-279, 282-283).

At the time of these events, respondent presented numerous claims for compensation to petitioner, on behalf of individual firemen who claimed that they should have been assigned to Orange Switcher No. 2 and to yard crews that used road locomotives not equipped with deadman controls. These claims were presented within the time and in the manner prescribed by the parties' 1948 grievance procedure agreement. Initially, petitioner disallowed the claims at each level of the grievance procedure. However, respondent filed a motion (J.A. 20-26) seeking redress in the proceeding in which the judgment and the injunction had been entered by the District Court. Petitioner was of the view that the motion sought relief beyond the court's power to grant and that the deadman control claims were entirely without foundation. Nevertheless, petitioner instructed its officials to stop the practices that had given rise to the claims and paid the

timely claims in order to dispose of the matter without further contention. That disposed of the motion with respect to the two groups of claims (J.A. 21, 23-24, 150-154, 174-177, 208-211, 213-216, 238, 244, 253-254, 256, 258, 279-280, 283, 285).

However, in May of 1965, respondent presented a number of additional claims to petitioner based on the occurrences that had given rise to the claims which petitioner had already paid. Unlike the paid claims, these later claims either were not presented or were not appealed within the time prescribed by the parties' grievance procedure (J.A. 278-286). Time was important, at least as regards the deadman control claims, because petitioner had no written records on which to base a determination of the relevant facts (J.A. 282, 284). Accordingly, petitioner refused to pay the untimely claims on the ground that they were barred by the 1948 grievance procedure agreement (J.A. 252-259, 278-286).

This litigation followed. On December 1, 1965, respondent filed a motion for further relief at the foot of the District Court's decrees, seeking redress for the untimely claims which petitioner had refused to pay and for two additional claims which had not been presented before (J.A. 245-248, 254-255, 256, 258, 280-281, 283, 285-286). Petitioner opposed the motion on the ground that the requirements of the parties' grievance procedure had not been satisfied, and on the further ground that under Section 3 of the Railway Labor Act (45 U.S.C. §153) exclusive jurisdiction of such claims following exhaustion of grievance procedures lies with adjustment boards (J.A. 272-287).

The District Court granted respondent's motion. It based its ruling on its own interpretation of the parties' 1948 contract—"If this language is construed literally, the claims here presented would be subject to the provisions" of the contract, but "the parties could not have had in contemplation the possibility of a compulsory arbitration sometime in

the future terminating in a judgment of the court''—and, alternatively, on the theory that whatever its intended scope, the 1948 contract could ''not oust the court of jurisdiction to determine a claim arising subsequently''—a jurisdiction derived from the court's duty ''of enforcing'' its judgment ''confirming the Award'' (J.A. 322-323, pp. 10a-11a, *infra*). Accordingly, the court entered an order requiring petitioner to honor the claims without regard to the requirements of the parties' grievance procedure or Section 3 of the Railway Labor Act (J.A. 329, p. 13a, *infra*).

On appeal, the Court of Appeals affirmed. Unlike the District Court, it did not undertake to resolve the parties' differences with respect to the interpretation of the 1948 contract—something that only the adjustment boards have the power to do.[3] Instead, the Court of Appeals assumed (without deciding) that the claims involved in the case are within the scope of the 1948 contract and Section 3 of the Railway Labor Act. Nevertheless, it held, the District Court had jurisdiction to determine the claims as an incident of its power to enforce its decrees (*i.e.*, the judgment on the Award) and to condition injunctive relief (pp. 19a-20a, *infra*):

> ''. . . On the petition of the railroads the court has enforced the award against the union. . . . It likewise has jurisdiction to enforce the award against the railroads. The railroads, like the unions, are subject to the court's power to enforce its own decrees.

---

[3] Disputes as to the interpretation of the 1948 contract should be referred to the joint committee to which the parties have agreed (see p. 3, n. 1, *supra*) and in any event are disputes as to the "interpretation or application of agreements" (45 U.S.C. § 153 First (i)) and are therefore within the adjustment boards' exclusive jurisdiction under Section 3 of the Railway Labor Act. See *Gunther* v. *San Diego & A.E.R. Co.*, 382 U.S. 257, 260-262 (1965); *Pennsylvania R. Co.* v. *Day*, 360 U.S. 548 (1959); *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U.S. 239 (1950); *Order of Conductors* v. *Pitney*, 326 U.S. 561 (1946).

"The general power of an equity court to impose conditions on those who seek equitable relief exists where an injunction is sought to enforce the provisions of the Railway Labor Act. *Brotherhood of Locomotive Engineers* v. *Missouri-Kansas-Texas R. Co.*, 363 U.S. 528 (1960). . . .

". . . Even assuming, but by no means deciding, that the carriers are right that these claims are minor disputes for which the contract provided a usual procedure within Section 3 of the Railway Labor Act, the District Court did not abuse its discretion in establishing a condition that employees injured by misapplication of the award have available a judicial remedy, and do not have to wait years for Adjustment Board vindication" (footnotes omitted).[4]

For reasons stated below, petitioner seeks review of that ruling.

Reasons for Granting the Writ

1. This case presents the question whether individual railroad employees' claims and grievances arising from alleged misapplications of an arbitration award must be handled like other claims and grievances under the Railway Labor Act—in accordance with the parties' grievance procedure followed by reference to an adjustment board under Section 3 of the Act (45 U.S.C. §153)—or whether instead such claims and grievances may be determined by the court that enters judgment upon the award pursuant to Section 9 of the Act (45 U.S.C. §159). That question may well be the most important question not yet decided by this

[4] Some months prior to the decision below, Section 3 of the Railway Labor Act (45 U.S.C. § 153) was amended so that it is no longer necessary "to wait years for Adjustment Board vindication" in *any* case, including cases pending on the date of the amendments. See P.L. 89-456, 80 Stat. 208 (1966); pp. 1a-3a, *infra*.

Court as to procedures applicable to railroad employees' claims and grievances.

Under the Railway Labor Act, the rules that govern employees' rights are established by "agreements" as to "rates of pay, rules, or working conditions" (45 U.S.C. §§ 152 First, Seventh, 153 First (i), 156). The Act provides detailed procedures for the settlement of disputes over both the *making* and the *application* of such "agreements." These disputes are known, respectively, as the "major and the minor disputes of the railway labor world." *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, 723 (1945).

Major disputes are governed primarily by Sections 5 through 10 of the Act (45 U.S.C. §§ 155-160). Section 6 of the Act (45 U.S.C. § 156) requires unions and railroads to give thirty days' written notice of intended changes in "agreements affecting rates of pay, rules, or working conditions" (45 U.S.C. § 156). Following the service of such a notice, the parties must negotiate, first in conferences and then with the assistance of the National Mediation Board, in an attempt to reach agreement (45 U.S.C. §§ 152 First, 155, 156). If that fails to settle the matter, the Mediation Board must proffer arbitration under Section 5 First of the Act (45 U.S.C. § 155 First). If the parties agree to arbitrate, the arbitration is conducted under Sections 7 and 8 of the Act (45 U.S.C. §§ 157, 158), and the board's award is filed in court, which enters judgment upon it unless it sets it aside, pursuant to Section 9 of the Act (45 U.S.C. § 159). If the parties do not agree to arbitrate, the Mediation Board terminates its services (45 U.S.C. § 155 First). Thirty days later the parties may use self-help to achieve their objectives, subject to the President's power to appoint an emergency board under Section 10 of the Act (45 U.S.C. §§ 155 First, 160). *See Locomotive Engineers* v. *B. & O. R. Co.*, 372 U.S. 284 (1963).

Thus, major dispute arbitrations under Sections 7-9 of the Act are part of the "contract-making" process. Lester B. Schoene, counsel, Railway Labor Executives Association, *Hearings on H. R. 706 before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare,* 89th Cong., 2d Sess., pp. 40-41 (1966). That is, under the statutory major dispute procedures, rules may be established either by agreement or arbitration. Either way, the rules so established become a part of the parties' "agreements affecting rates of pay, rules, or working conditions" (45 U.S.C. § 156), subject to further change only by agreement or pursuant to the statutory major dispute procedures. *Brotherhood of Railroad Trainmen* v. *Akron & B. B. R. Co., supra; Manning* v. *American Airlines,* 329 F. 2d 32 (2d Cir. 1964).

Once the rules have been established, the "minor" disputes that arise with respect to their application are governed primarily by Section 3 of the Act (45 U.S.C. § 153).[5] Under Section 3 First (i), "the disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions . . . shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes" (45 U.S.C. § 153 First (i)). Following exhaustion of that procedure, either party may refer the dispute for final determination to the

---

[5] Under Sections 5 Second, 5 Third (d), 7 Third (c) and 8 (m) of the Act (45 U.S.C. §§ 155 Second, Third (d), 157 Third (c), 158 (m)), the National Mediation Board determines disputes as to the meaning of mediation agreements, and arbitration boards likewise determine disputes as to meaning of their awards. But these tribunals have no power to determine individuals' claims and grievances arising from the application of agreements and awards—a matter governed by Section 3. See 45 U.S.C. § 155 Third (d); *Thirty-Third Annual Report of the National Mediation Board,* p. 60.

National Railroad Adjustment Board, or to a system board of adjustment established by agreement, or to a special board of adjustment appointed pursuant to the 1966 amendments of Section 3 (45 U.S.C. § 153 First (i), Second; P.L. 89-456). In short, under Section 3, individuals' claims and grievances must be handled in accordance with the parties' grievance procedure and then are subject to compulsory grievance arbitration by an adjustment board. See *Trainmen* v. *Chicago R. & I. R. Co., supra,* at 35-39; *Walker* v. *Southern R. Co.,* 385 U.S. 196, 198 (1966).

This Court has held repeatedly that the procedures prescribed by Section 3 constitute "a mandatory, exclusive, and comprehensive system for resolving grievance disputes," *Locomotive Engrs.* v. *L. & N. R. Co.,* 373 U.S. 33, 38 (1963); *Gunther* v. *San Diego & A.E.R. Co.,* 382 U.S. 257, 264 (1965), and therefore that claims and grievances to which Section 3 applies—claims and grievances within an adjustment board's jurisdiction—may not be determined by the courts. *Pennsylvania R. Co.* v. *Day,* 360 U.S. 548 (1959); *Slocum* v. *Delaware, L. & W. R. Co.,* 339 U.S. 239 (1950); *Order of Conductors* v. *Pitney,* 326 U.S. 561 (1946). "Since the Board has jurisdiction, it must have exclusive primary jurisdiction." *Pennsylvania R. Co.* v. *Day, supra,* at 552.

This case concerns individual employees' claims for compensation—grievances—that arose from alleged misapplications of the rules established by the Award by Board 282. Petitioner contends that the claims should have been handled in accordance with the grievance procedure established by the parties' 1948 contract, that following exhaustion of that procedure the claims should have been referred to an adjustment board under Section 3, and therefore, that the District Court lacked jurisdiction of the claims under the rule of *Day, Slocum* and *Pitney.* The court below held, however, that "even assuming . . . that the carriers are right

that these claims are minor disputes for which the contract provided a usual procedure within Section 3 of the . . . Act," nevertheless the District Court could determine the claims as an incident of its undoubted power "to enforce its own decrees"—*i.e.*, to "enforce the award against the railroads." Thus, the court below justified the departure from the rule of *Day*, *Slocum* and *Pitney* on the ground that the District Court could determine the claims as an incident of its power to enforce the judgment entered pursuant to Section 9 of the Act.[6] Accordingly, the case squarely presents the question whether claims and grievances arising from alleged misapplications of rules established by an arbitration award are subject to the procedures applicable to other claims and grievances, or whether instead they may be determined by the court that enters judgment upon the award pursuant to Section 9.

This is an appropriate case in which to decide that question. The Award by Board 282 is the most important arbitration award in the history of the industry. It does not differ in any material way from other Railway Labor Act arbitration awards. To be sure, the arbitration was ordered by the Congress. But by command of the Congress, Board 282 made a "complete and final disposition" of a major dispute over changes in agreements (such as the National Diesel Agreement) proposed in notices served under Section 6 (P.L. 88-108, § 3). Thus, like other arbitration awards disposing of major disputes, the Award by Board 282 effected changes in "agreements affecting rates of pay, rules, or

---

[6] The Court of Appeals also stated that the District Court could make a judicial remedy available as a condition of its injunction against strikes by respondent. However, for reasons stated at pp. 19-20, *infra*, we do not understand that to mean that the District Court could have conditioned its injunction in that fashion in the absence of jurisdiction to determine the claims as an incident of its power to enforce its judgment entered pursuant to Section 9. Whether such jurisdiction exists under Section 9 is the question presented.

working conditions" within the meaning of Section 6. *Brotherhood of Railroad Trainmen* v. *Akron & B. B. R. Co., supra.* By command of the Congress, the arbitration was "conducted pursuant to sections 7 and 8 of the . . . Act," and judgment was entered upon the Award pursuant to Section 9 of the Act (P.L. 88-108, § 4). Thus, the judgment involved in this case had the effect of any judgment entered pursuant to Section 9. Moreover, the two groups of claims involved in this case are typical of the kinds of claims and grievances that might arise from the implementation of any arbitration award disposing of a major dispute (see pp. 5-6, *supra*).

2. The question presented warrants review by this Court. As stated above, railroad work rules are established in two ways under the Railway Labor Act, by contract or arbitration. Thus, the decision below removes an obviously important category of claims and grievances arising from the application of such rules from the "mandatory, exclusive, and comprehensive system for resolving grievance disputes," *Locomotive Engrs.* v. *L. & N. R. Co., supra,* prescribed by Section 3. The record demonstrates the importance of such a decision in concrete terms. It shows that nearly a thousand claims arose from the application of the Award by Board 282, on a single carrier, in a little less than a year (J.A. 27-172). The Award by Board 282 applied to over 160 different railroads, it remained in effect for two years, and respondent's briefs in the court below mentioned countless similar claims against other railroads. The Award by Board 282 was not the first railway labor arbitration award —Board 282 was so numbered because it was the 282nd arbitration board established under the Act—nor is it the last such award.[7] Unless the decision below is reviewed by

[7] As of June 30, 1967, Arbitration Board No. 295 had rendered its Award. *Thirty-Third Annual Report of the National Mediation Board,* p. 46. Most arbitrations under Sections 7-9 of the Railway Labor Act settle major disputes as to "the making of agreements." Lester B. Schoene,

this Court, it will stand as a precedent applicable to all claims and grievances arising from alleged misapplications of awards establishing work rules made by these many railway labor arbitration boards.

3. The holding below, with respect to the important group of claims and grievances as to which it will stand as a precedent, departs sharply from basic federal labor policy expressed in national labor legislation and numerous decisions of this Court. In *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650 (1965), this Court said that "as a general rule in cases to which federal law applies, federal labor policy requires that individual employees wishing to assert contract grievances must *attempt* use of the contract grievance procedure agreed upon by employer and union as the mode of redress" (379 U.S. at 652), noting in that connection that "if a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement" (379 U.S. at 653). So too, in *Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 574 (1963), the Court held that doubts as to the scope of grievance procedures should be resolved in favor of applicability, stating that "the grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government" (363 U.S. at 581). See also *Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564 (1960); *Steelworkers* v. *Enterprise Corp.*, 363 U.S. 593 (1960). And in *John Wiley & Sons* v. *Livingston*, 376 U.S. 543 (1964), the Court, noting "the central role of arbitration in effectuating national labor policy" (376 U.S. at 549), applied the *Steelworkers* rule to a situation which "in all probability . . . was one not expressly contemplated . . . when the agreement was made" (376 U.S. at 554). See also

counsel, Railway Labor Executives Association, *Hearings on H.R. 706 before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare*, 89th Cong., 2d Sess., pp. 40-41 (1966); see also *Thirty-Third Annual Report of the National Mediation Board*, p. 45.

Teamsters Local v. *Lucas Flour Co.*, 369 U.S. 95, 106 (1962) (it is "the basic policy of national labor legislation to promote the arbitral process as a substitute for economic warfare"); *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 458-459 (1957) (the "congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes" is "clear").

Apart from an exception for wrongful discharge suits grounded upon state law,[8] the "federal labor policy" requiring utilization of contract grievance procedures culminating in grievance arbitration applies to railway labor cases. As stated above, Section 3 First (i) of the Railway Labor Act (45 U.S.C. § 153 First (i)) expressly provides that individuals' claims and grievances shall be handled in the manner prescribed by the parties' grievance procedure and are then subject to compulsory arbitration by an adjustment board. See *Trainmen* v. *Chicago R. & I. R. Co.*, *supra*, at 39; *Walker* v. *Southern R. Co.*, *supra*, at 198. Thus, Section 3 makes compliance with grievance procedures and grievance arbitration an express requirement of federal railway labor law in a fashion that is much more explicit than the corresponding requirement of Section 301 of the Labor Management Relations Act (29 U.S.C. § 185). And even in wrongful discharge cases grounded upon state law, to which Section 3 does not apply, see *Moore* v. *Illinois Central R. Co.*, 312 U.S. 630 (1941); *Walker* v. *Southern R. Co.*, *supra*, the plaintiff "must show that he has exhausted his administrative remedies, under his contract of employment . . . , provided the applicable state law so requires." *Transcontinental Air* v. *Koppal*, 345 U.S. 653, 654 (1953); *Belanger* v. *New York Central Railroad Co.*, 384 F. 2d 35 (6th

---

[8] See *Moore* v. *Illinois Central R. Co.*, 312 U.S. 630 (1941); *Slocum* v. *Delaware, L. & W. R. Co.*, *supra*, at 244; *Transcontinental Air* v. *Koppal*, 345 U.S. 653 (1953); *Walker* v. *Southern R. Co.*, *supra*.

Cir. 1967); *Pacilio* v. *Pennsylvania Railroad Co.*, 381 F. 2d 570 (2d Cir. 1967).

4. We submit that the question presented was decided incorrectly below. Nothing in Section 9 of the Railway Labor Act justifies the lower courts' departure from the exhaustion requirement of *Maddox*, the exclusive jurisdiction rule of *Day*, *Slocum* and *Pitney*, or basic federal labor policy promoting use of grievance machinery culminating in arbitration. On the contrary, the claims involved in this case are subject to the parties' grievance procedure and to Section 3 of the Act, and therefore should not have been entertained by the District Court.

The parties' 1948 contract requires exhaustion of the grievance procedure with respect to "*all* claims and grievances arising on and after November 1, 1948" before redress is sought from "a tribunal"—whether it be the Adjustment Board or a court—"having jurisdiction pursuant to law or agreement" (J.A. 266). Therefore, even if Section 3 of the Act did not apply to the claims, so that the court that entered judgment on the Award could entertain them, "federal labor policy" nevertheless would require the claimants to exhaust the parties' grievance procedure before seeking redress in court. *Republic Steel Corp.* v. *Maddox*, *supra*.

We submit, however, that Section 3 *does* apply to these claims. Section 3 applies to disputes between individual employees and railroads "growing out of grievances *or* out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions" (45 U.S.C. § 153 First (i)) (emphasis added). The Orange Switcher claims undeniably grew out of the "application of agreements" within the terms of Section 3, because they grew out of violations of the National Diesel Agreement. See pp. 5-6, *supra*. The deadman control claims likewise grew out of the

"application of agreements" within the terms of Section 3, because they grew out of alleged violations of the "deadman control" rule established by the Award (J.A. 7), and the rules established by the Award are a part of the parties' "agreements affecting rates of pay, rules, or working conditions." See pp. 10-11, 13-14, *supra; Brotherhood of Railroad Trainmen* v. *Akron & B. B. R. Co., supra.* And even if that were not true, both groups of claims nevertheless would be within Section 3 because they constitute "grievances"—*i.e.*, they are "founded upon some incident of the employment relation, or asserted one," *Elgin, J. & E. R. Co.* v. *Burley, supra,* at 723. See *Missouri-Kansas-Texas R. Co.* v. *Brotherhood of Railroad Tr.*, 342 F. 2d 298, 300 (5th Cir. 1965); *Ramsey* v. *Chesapeake & O. R. Co.*, 75 F. Supp. 740 (N.D. Ohio 1948).

Since the claims involved in this case are subject to Section 3, they are within the adjustment boards' exclusive jurisdiction and cannot be determined by the courts under the rule of *Day, Slocum* and *Pitney.* The District Court's entry of judgment upon the Award under Section 9 of the Act does not affect that conclusion. In relevant part, Section 9 provides only that awards shall be filed in court, that they "shall be conclusive on the parties as to the merits and facts of the controversy", and that if they are not set aside, "the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties" (45 U.S.C. §159 First, Second, Fifth, Sixth). Thus, on its face, Section 9 purports only to give the courts the power to confirm the "conclusive" character of an award. Since courts have the power to enforce their decrees, a court which enters such a judgment may order the parties to the award to comply with it if they refuse to do so. But Section 9 does not purport to vest in the court jurisdiction to entertain individuals' claims or grievances arising from misapplications of the award.

Nothing in either Section 3 or Section 9, or in the legislative history of these provisions, suggests that the Congress intended the scope of the "mandatory, exclusive, and comprehensive system for resolving grievance disputes" prescribed by Section 3 to be restricted by the entry-of-judgment provision contained in Section 9. Accordingly, the District Court's entry of judgment upon the Award under Section 9 did not justify its departure from the rule of *Day, Slocum* and *Pitney*.[9]

5. We note that the Court of Appeals stated that the District Court could make "available a judicial remedy" for the employees' claims and grievances as a condition of its injunction against strikes by respondent. However, we do not understand that to be an alternative ground for decision. Otherwise, the decision below would conflict directly with this Court's decision in *Central Kentucky Co. v. Comm'n*, 290 U.S. 264 (1933). There, this Court held that federal courts may not condition injunctive relief so as to make available a judicial remedy for matters within the exclusive jurisdiction of other tribunals.[10] See also

---

[9] Analogously, under Sections 2 Seventh and 6 of the Act (45 U.S.C. §§ 152 Seventh, 156), courts may order the parties to a collective bargaining contract to comply with the contract if they refuse to do so. See *Southern Ry. Co. v. Brotherhood of Locomotive Firemen, Etc.*, 337 F. 2d 127 (D.C. Cir. 1964). But no one has ever contended that the entry of such a judgment would give the judgment court the power to entertain employees' claims for compensation arising from subsequent misapplications of the contract. That is precluded by Section 3, as construed in *Day, Slocum* and *Pitney*.

[10] In *Central Kentucky*, this Court confirmed the general "power of a court of equity, in the exercise of a sound discretion, to grant, upon equitable conditions, the extraordinary relief to which a plaintiff would otherwise be entitled, without condition" (290 U.S. at 271). The Court noted, however, that there "are nevertheless some limitations upon the extent to which a federal court of equity may properly go in prescribing such conditional relief, which are inherent in the nature of the jurisdiction which it exercises" (290 U.S. at 271), and held that it was improper to condition an injunction restraining enforcement of an invalid rate for the sale of natural gas upon consent to a rate deemed by the court to be appropriate,

Ventura Consolidated Oil Fields v. *Rogan*, 86 F. 2d 149, 154-155 (9th Cir. 1936). The *Central Kentucky* rule applies to conditions which would infringe the adjustment boards' jurisdiction under Section 3. See *Locomotive Engineers* v. *M.-K.-T. R. Co.*, 363 U.S. 528, 532-534 (1960).[11] Therefore, the District Court could condition its injunction to make "available a judicial remedy" for the employees' claims *only if* the adjustment boards' jurisdiction is not exclusive—*i.e.*, only if (as the court below held) the District Court had jurisdiction to determine the claims as an incident of its power to enforce its judgment under Section 9. Whether the District Court had such jurisdiction is the question presented.

---

because such interference with the legislative jurisdiction of a state administrative agency to fix just and reasonable rates "is not a proper exercise of the discretionary powers of a federal court of equity" (290 U.S. at 272).

[11] In the *M.-K.-T.* case, cited by the court below in support of its discussion of conditions, this Court held that a District Court, enjoining a strike over a minor dispute pending its disposition under Section 3, see *Trainmen* v. *Chicago R. & I. R. Co.*, *supra*, "is free to exercise the typical powers of a court of equity . . . to impose conditions requiring maintenance of the *status quo*" (363 U.S. at 531). In so holding, however, this Court cited *Central Kentucky* for the existence of such a power (363 U.S. at 532 n. 4) and emphasized that "federal courts ought not act in such a way as to infringe upon the jurisdiction" of adjustment boards under Section 3 (363 U.S. at 532-534). Thus, this Court's decision in *Missouri-Kansas-Texas* confirmed the applicability of the *Central Kentucky* rule to conditions that would infringe the adjustment boards' jurisdiction.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

TOM MARTIN DAVIS
Esperson Building
804 Travis Street
Houston, Texas

SHEA & GARDNER
734 Fifteenth Street, N.W.
Washington, D.C. 20005
Of Counsel for Petitioner

FRANCIS M. SHEA
RICHARD T. CONWAY
RALPH J. MOORE, JR.
734 Fifteenth Street, N.W.
Washington, D.C. 20005

JAMES R. WOLFE
Union Station Building
Chicago, Illinois 60606
Attorneys for Petitioner